

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209179

DATE: October 29, 1982

MATTER OF: CMP Incorporated

DIGEST:

Failure to acknowledge material amendment to solicitation which was received and acknowledged by only other bidder justifies rejection of bid as nonresponsive despite protester's claim that it received the amendment too late before bid opening to permit timely acknowledgment. The procuring activity is not an insurer of the delivery of bidding documents to prospective bidders and there is no allegation that the activity deliberately attempted to prevent the bidder from competing.

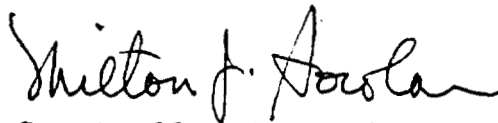
CMP Incorporated (CMP) protests the determination of the Department of the Army to reject its bid under solicitation No. DABT01-82-B-0195-4 for the maintenance of certain IBM equipment. The Army apparently determined that CMP's bid was nonresponsive for failure to acknowledge receipt of an amendment containing revisions to the scope of the estimated outside maintenance work. CMP concedes that it failed to acknowledge the amendment, but asserts that it should not be penalized for this omission because it did not receive a copy of the amendment until the day before the extended bid opening date, which did not provide it sufficient time to transmit a timely acknowledgment.

We deny the protest.

CMP states that the only other bidder, which apparently did acknowledge the amendment, was the incumbent, which picked up a copy of the amendment at the Army base. According to CMP, it cannot ascertain when its copy of the amendment was sent by the Army because there was no date stamped on the envelope.

The general rule is that the procuring activity is not an insurer of delivery of bidding documents to prospective bidders; thus, the bidder bears the risk of loss or delay in receiving its copy of an amendment. Scott-Griffin, Incorporated, B-193053, February 9, 1979, 79-1 CPD 93. In this regard, the burden is on the bidder to ascertain whether there are any amendments to a solicitation. Fifth Generation Systems, Inc., B-196630, February 28, 1980, 80-1 CPD 162. If a bidder does not receive a material amendment to a solicitation in a timely manner and the failure is not the result of a conscious and deliberate attempt on the part of the agency to preclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. Fifth Generation Systems, Inc., *supra*. Here, CMP merely objects to the late date on which it received the amendment; there is no allegation by CMP of any deliberate effort on the part of the Army to preclude CMP from competing.

Since the protester's initial submission affirmatively demonstrates that the protest is without legal merit, we have decided the protest without requesting an agency report. X-Cel Constructors, Inc., B-206746, April 5, 1982, 82-1 CPD 311.



Acting Comptroller General
of the United States